

Complaint

26 F. T. C.

IN THE MATTER OF

ROBERT MORRIS, TRADING AS D. P. PEN COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3131. Complaint, May 15, 1937—Decision, Apr. 9, 1938

Where an individual engaged in sale and distribution of fountain pens and pencils, in commerce between and among the various States and in the District of Columbia—

Described such pens in newspaper advertisements as possessing retail values and prices many times in excess of the actual price at which said individual sold his merchandise to ultimate purchasers, and sold many of articles dealt in with retail prices stamped and printed on labels attached or on containers thereof, which were many times in excess of the actual selling price to consuming public and many times in excess of their true and actual value, through such advertising as offering, for 59 cents, for two-day period only and for "special discount coupon", as pretended, alleged "\$5.00 Value Vacuum 'Morris' Fountain Pens," etc., and, for 29 cents, "\$2.00 Pencils to Match Above Pens";

Facts being such indicated retail prices, which appeared on items of merchandise or on containers thereof, were not intended to be true retail price or true retail value of merchandise thus price-marked, but to be far in excess of price to be charged and actually charged in sale of said articles to consumers purchasing in usual course of trade, and far in excess of true value of such articles, true retail value of which was 59 cents and 29 cents, respectively, and not \$5 and \$2, respectively, as advertised;

With effect of misleading a substantial part of consuming public by inducing them to believe that said items were superior products made by manufacturer to sell at retail at a price closely approximating that stamped thereon, and that said pens had retail values closely approximating their purported retail value and price of \$5, and had a value substantially in excess of their aforesaid actual value of about 59 cents; and with result that such false and misleading statements and representations constituted inducements for a substantial number of purchasers to buy products thus offered, sold, and distributed, and unfairly diverted to said individual substantial volume of trade from competitors, among whom there are many who manufacture ordinary fountain pens and others who make pens of superior quality and truthfully represent selling price or value to consuming public, and with tendency and capacity so to divert:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commis-

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sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Robert Morris, doing business under the trade name and style of "D. P. Pen Company," hereinafter referred to as respondent, is now and has been using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Robert Morris is an individual who is now and has been for all times mentioned herein doing business under the trade name and style of D. P. Pen Company, city of Bordentown, State of New Jersey. Respondent is now and has been for more than 1 year last past engaged in the business of selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said fountain pens, when sold, to be transported from his principal office and place of business in the State of New Jersey, to the purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said fountain pens sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling fountain pens in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business as detailed in paragraphs 1 and 2 hereof, has caused and still causes to be inserted in newspapers having a general interstate circulation, advertisements purporting to be descriptive of the merchandise offered for sale and sold by him. The articles offered for sale and sold by the respondent are described in said advertisements as possessing retail values and prices many times in excess of the actual price at which the respondent sells said merchandise to purchasers. Many of said articles have retail prices stamped and printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public. The retail prices so stamped or printed as aforesaid are many times in excess of the actual selling price of the said articles to the consuming public, and are many times in

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excess of their true and actual value. The retail prices so stamped or printed, as aforesaid, are false and fictitious, and in no sense represent either the true value or the true selling price of the article so price-marked.

Among the said items advertised as aforesaid, are the following:

9:30 a. m. to
8 p. m. only

FRI.-SAT., Sept. 11th & 12th

9:30 a. m. to
8 p. m. only

59¢

SPECIAL DISCOUNT COUPON

59¢

THIS CERTIFICATE AND 59¢ ENTITLES THE BEARER TO ONE OF OUR GENUINE INDESTRUCTIBLE \$5.00 VALUE VACUUM "Morris" FOUNTAIN PENS. Visible Ink Supply. YOU SEE the ink! A LIFETIME GUARANTEE WITH EACH PEN.

GET READY FOR SCHOOL OPENING

(cut of pen)

Visible Ink

ONLY "MORRIS" HAS ALL NINE FEATURES REQUIRED IN A FINE WRITING PEN TODAY

- | | |
|--|---|
| 1—"Morris" lifetime guarantee | 6—New flat clip—will not tear pockets. |
| 2—Greater Ink Capacity | 7—All fittings chromium—will not tarnish. |
| 3—One stroke vacuum fill | 8—Latest laminated and pearl colors. |
| 4—Smoother writing point | 9—Full barrel visible ink supply—not mere last drop visibility. |
| 5—Featherweight perfectly balanced pen | |

\$2 PENCILS TO MATCH ABOVE PENS, 29¢

Price after
this sale
\$5.00

ADD
11¢ Extra
for Mail
Orders

LIMIT
3 sets to
Each
Certificate

The retail prices as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended to be the true retail price or the true retail value of the merchandise so price-marked. The retail prices appearing on the articles, or the containers thereof, were intended by the respondent to be far in excess of the prices to be charged, and actually charged, in the sale of said articles

to the consumer purchasing in the usual course of trade, and far in excess of the true value of the various articles so price-marked.

PAR. 5. Over a period of many years, manufacturers in many trades have formed a custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or article to the ultimate consumer purchaser; this suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and retailer, and consequently, to represent the approximate retail sales value of the article. The range of suggested retail prices is intended by the manufacturer to be indicative of the quality and character of the materials used and the process by which the article is manufactured. The public generally understands the custom herein detailed, and has been led to and does place its confidence in the price-marking so stamped and the representations thereby made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance on the aforesaid custom.

PAR. 6. For many years a substantial part of the consuming public have expressed, have had and still have, a marked preference for fountain pens manufactured of superior materials and produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual run of prices for fountain pens manufactured with the usual and customary materials, or with inferior materials. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said fountain pens or on price labels or tags attached thereto as indicative of the superior quality and character of the fountain pens and their resulting higher values.

Whenever a genuinely superior product so stamped or marked with the retail price thereof is offered for sale at a substantially reduced price, the general purchasing public has been led to believe and does believe, that in purchasing said products it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has had and still has a preference for purchasing genuinely superior products sold at less than the customary retail price thereof over ordinary products sold for the regular price, which is lower than the normal retail price of the superior product in the customary course of trade.

In truth and in fact, the merchandise sold by respondent and described herein is not a superior product, normally sold in the usual channels of trade for the retail price stamped on price labels or

tags attached thereto, or on the container thereof, or for any price closely approaching the said stamped retail price.

PAR. 7. There are among the competitors of respondent many who manufacture ordinary fountain pens, and others who manufacture fountain pens of superior quality, and who truthfully represent said pens and their selling price or value to the consuming public.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise as herein described, with false and fictitious price-marks stamped on price labels or tags attached thereto, is to mislead a substantial part of the consuming public in the several States of the United States, by inducing them to mistakenly and erroneously believe that:

The items of merchandise sold and distributed by respondents were and are superior products, manufactured with the intent and purpose on the part of the manufacturer that said products should be sold at retail at a price closely approximating the price stamped thereon.

PAR. 9. The foregoing false and misleading statements and representations on the part of the respondent are inducements for a substantial number of purchasers to buy the products so offered for sale, sold, and distributed by respondent, and have the tendency and capacity to, and do, unfairly divert to the respondent a substantial volume of trade from competitors of respondent engaged in similar businesses, with the result that substantial quantities of respondent's products are sold to the consuming public on account of said beliefs induced by the false and misleading representations, and as a consequence thereof, a substantial injury has been done to competitors in commerce among the several States of the United States, and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 15, 1937, issued and on May 18, 1937, served its complaint in this proceeding upon respondent Robert Morris, an individual trading as the D. P. Pen Company. The

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respondent failed to file answer. After due notice to respondent, hearings were held on behalf of the Commission at which hearings evidence was adduced in support of the charges in the Commission's complaint. Respondent has failed to adduce evidence in opposition to the charges made in the Commission's complaint. All attempts to serve upon respondent a copy of the Commission's brief failed. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence and the Commission's brief, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Robert Morris is an individual doing business under the trade name and style of D. P. Pen Company, with his principal office and place of business in the city of Bordentown, State of New Jersey. He has been for more than 1 year last past engaged in the business of selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia. When the fountain pens are sold the respondent transports, or causes them to be transported, from his principal office and place of business in the city of Bordentown, State of New Jersey, to purchasers thereof located in the various States of the United States other than New Jersey and in the District of Columbia. There is now, and has been for some time past, a course of trade in the fountain pens sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business respondent is now, and has been, in competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling fountain pens in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the conduct of his business, has caused, and still causes advertisements purporting to be descriptive of the merchandise offered for sale and sold by him to be inserted in newspapers having a general interstate circulation. Said pens are described in such advertisements as possessing retail values and prices many times in excess of the actual price at which the respondent sells his merchandise to ultimate purchasers. Many of the articles have retail prices stamped and printed on the labels attached thereto or on the containers in which they are offered for sale and sold to the public. The retail prices so stamped or printed are many times in excess of the actual

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selling price to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed are false and fictitious and in no sense represent the true value or the true selling price of the article so price-marked. Among the items advertised as herein set out are the following:

9:30 a. m. to
8 p. m. only

9:30 a. m. to
8 p. m. only

FRI.-SAT., Sept. 11th & 12th

59¢

SPECIAL DISCOUNT COUPON

59¢

THIS CERTIFICATE AND 59¢ ENTITLES THE BEARER TO ONE OF OUR GENUINE INDESTRUCTIBLE \$5.00 VALUE VACUUM "MORRIS" FOUNTAIN PENS. Visible Ink Supply. YOU SEE the ink! A LIFETIME GUARANTEE WITH EACH PEN.

GET READY FOR SCHOOL OPENING

(cut of pen)

Visible Ink.

ONLY "MORRIS" HAS ALL NINE FEATURES REQUIRED IN A FINE WRITING PEN TODAY

- | | |
|--|---|
| 1—"Morris" lifetime guarantee | 6—New flat clip—will not tear pockets. |
| 2—Greater Ink Capacity | 7—All fittings chromium—will not tarnish. |
| 3—One stroke vacuum fill | 8—Latest laminated and pearl colors. |
| 4—Smoother writing point | 9—Full barrel visible ink supply—not mere last drop visibility. |
| 5—Featherweight perfectly balanced pen | |

\$2 PENCILS TO MATCH ABOVE PENS, 29¢

Price after
this sale
\$5.00

ADD
11¢ extra
for Mail
Orders

LIMIT
3 sets to
Each
Certificate

The retail prices as indicated above, appearing on the items of merchandise or on the containers thereof were not intended to be the true retail price or the true retail value of the merchandise so price-marked. The retail prices appearing on the articles or the containers were intended by the respondent to be far in excess of the prices to be charged and actually charged in the sale of the articles

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to the consumer purchasing in the usual course of trade, and far in excess of the true value of the articles so price-marked. In fact the actual and true retail value of the pens and pencils sold and distributed by respondent is 59¢ and 29¢, respectively, and not \$5.00 and \$2.00, respectively, as advertised by respondent.

PAR. 4. There are among the competitors of respondent many who manufacture ordinary fountain pens and others who manufacture fountain pens of superior quality who truthfully represent the selling price or value to the consuming public.

PAR. 5. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the articles of merchandise as herein described, with false and fictitious price-marks stamped on price labels or tags attached thereto, or on the containers thereof, is to mislead a substantial part of the consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that the items of merchandise sold and distributed by respondent were and are superior products, manufactured with the intent and purpose on the part of the manufacturer that said products should be sold at retail at a price closely approximating the price stamped thereon; that said pens have retail values closely approximating the purported retail value and price of \$5.00; and that said pens have a value substantially in excess of their true and actual value of approximately 59¢.

PAR. 6. The foregoing false and misleading statements and representations on the part of the respondent are inducements for a substantial number of purchasers to buy the products so offered for sale, sold, and distributed by respondent, and have the tendency and capacity to and do unfairly divert to the respondent a substantial volume of trade from competitors of respondent also engaged in selling and distributing fountain pens in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent Robert Morris, an individual trading as D. P. Pen Company, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the Commission's brief and the record herein (the respondent having filed no answer to the

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proceeding herein and having elected not to introduce any evidence on his behalf or file a brief herein), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Robert Morris, an individual trading as D. P. Pen Company, or doing business under any other trade name, his agents, representatives, servants, and employees in connection with the offering for sale, sale, and distribution of fountain pens or pencils in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing, through fictitious prices marked or stamped on or affixed to said products, or on the containers thereof, or through any other means or device or in any manner, that said prices so marked, stamped, or affixed are the regular or customary retail prices for such products;

2. Representing, as the customary or regular retail prices for such products, prices which are in fact fictitious and greatly in excess of the prices at which said products are regularly and customarily offered for sale and sold at retail.

It is further ordered, That respondent shall, within 60 days from and after the date of service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

DONALD REICHGOTT, INDIVIDUALLY AND TRADING AS
AMERICAN NOVELTY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3260. Complaint, Nov. 4, 1937—Decision, Apr. 9, 1938

Where an individual engaged in sale and distribution of various articles of merchandise, including electric razors and pen and pencil sets, to wholesale dealers and jobbers—

Furnished push cards for distribution of such merchandise to ultimate consumer, wholly by lot or chance, under plan or scheme by which number selected by chance, as disclosed under disc, determined amount paid by player, and in which correct chance selection from card's list of feminine names of name corresponding to that disclosed under master seal after sale of chances, resulted in player's receiving, without further cost, article of merchandise specified on card, and in which those selecting certain indicated numbers also similarly received articles of merchandise, which various articles were of a greater value than cost of single push or punch, and normal retail prices of which were much in excess of such cost;

With result of supplying to and placing in hands of others, through practice of forwarding said cards, descriptive literature and instructions to members of public, means of conducting lotteries, in accordance with such plan, in sale of his merchandise, purchased, sold, and distributed by many, attracted by said method and element of chance involved in sale or distribution thereof, in preference to that offered and sold by competitors, who do not use same or equivalent method, and with effect of unfairly diverting to him trade and custom from said competitors, including many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom, and do not use same or equivalent methods, and with tendency and capacity so to divert:

Held, That such acts and practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Donald Reichgott, individually and trading as American Novelty Company hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in